

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In Re Application of: Michael Rocheleau)
Patent Application No.: 10/823,299)
Filing Date: April 13, 2004)
For: STEP AIR FOIL)

**Request For Reconsideration Of The Petition
To Withdraw Holding Of Abandonment
Based On Failure To Receive Office Action**

Honorable Commissioner for Patents
Mail Stop Petition
P.O. Box 1450 Alexandria, VA 22313-1450

Dear Sir:

Applicant's undersigned attorney hereby petitions the Patent and Trademark Office to reconsider the Decision mailed August 6, 2007 to dismiss the Petition to Withdraw the Holding of Abandonment as "the showing of record was insufficient to warrant withdrawal of the holding of abandonment at this time".

I am the Patent Counsel and Director of Intellectual Property at Sequa Corporation ("SEQUA"), the parent company of Megtec Systems, Inc., the assignee of the subject patent, and my office has responsibility for the subject patent. SEQUA is the parent company of several other subsidiaries and divisions of SEQUA, and my office has responsibility for the United States patents and applications of all the subsidiaries and divisions of SEQUA, including the prosecution of applications and payment of fees such as the Notice of Allowance Fee.

We have a manual docketing system at SEQUA which has been in use at SEQUA since before I was retained as the Patent Counsel to SEQUA twenty-one

years ago. This system has worked well, as it provides for due dates to be entered upon the receipt of an item which requires a submission or response to the United States Patent and Trademark Office.

The materials for our manual docket system are in the SEQUA Patent Department file room, with a docket card file located in that room. My office, the office of the patent clerk and the file room are adjacent to each other.

There are only two people who worked with our docket system, from November 2006 to present, namely SEQUA's patent clerk, Amy Herrmann and me. Mrs. Herrmann was responsible for the docket system during this time period. If Mrs. Herrmann was out of the office for some days, the docketing system would await her return or I may have performed some functions. Mrs. Herrmann has worked for me in the position of patent clerk at SEQUA from July 1985 through July 1993 and from May 2006 to present. To my knowledge, no other person aside from the two I identified used or worked with SEQUA's docketing system, from November 2006 to present, and no one else would have access to, or have reason to add to or remove materials from the docketing system.

I am familiar with what Mrs. Herrmann does with respect to the docketing system. I trained her in how to enter information in and retrieve information from our docketing system, including due dates for Official Actions which includes the Notice of Allowance and Issue Fee Due, and made sure that she is aware of her responsibilities concerning the docketing system and the importance of the docketing system. As she works with me on patent related matters on a daily basis, she is well aware of the importance of the docketing system. She uses the system to keep track of all of the dates on which actions relating to patents and applications are due, including Notice of Allowances and Issue Fees Due.

SEQUA's U.S. Patent Application Office Action docketing system has for decades used a docket card system in which Official Actions are arranged in chronological order of the due dates of the Official Action. When an Official Action is received for any subsidiary or division of SEQUA, the following steps are taken:

- 1) the Official Action is noted on the docket card with the due date for response marked in pencil in the lower right corner of the docket card and the Official Action is noted on the jacket file of the application;
- 2) the file, Official Action and docket card are then forwarded to me for review;
- 3) I note the due dates of any Official Action in my personal calendar;
- 4) the docket card is placed into the current docket file of the docket card system in a sequence according to the due date;
- 5) a Notice of Allowance letter is sent to the business group or division requesting their permission to issue the patent and pay the fee then due; and
- 6) at least once each month the current docket file of the file card system is checked for responses due with a response prepared and fee paid as appropriate.

The foregoing Patent Office Communication procedures were written in instructions in an instruction binder kept in the desk of the Patent Clerk. The instructions binder had details of procedures for operation of the Patent Department at SEQUA. A copy of the Patent Office Communication instructions which were in the binder since before November 2006 and to date is attached as Exhibit A. Note the Section for Notice of Allowance/Issue Fee Due. Mrs. Herrmann is aware of the Patent Office Communication instructions and follows them, since I actively use the docket system and review the docket cards, current docket file and application jacket files.

Our docketing system has been carefully designed and carefully operated by SEQUA over the past 20 years. Our manual system for docketing for timely

responses to Office Actions has reliably kept track of due dates. It has been used to reliably handle hundreds of U.S. Patent applications without SEQUA missing Issue Fee due dates.

With regard to the subject Application, I do not believe that the Notice of Allowance and Issue Fee due was received by our office. The docket card for this application, attached as Exhibit B contains no notation of receipt of the Notice of Allowance and Issue Fee due for the subject application. Nor is there any notation on the application jacket file, copy attached as Exhibit C, nor in my personal calendar in February 2008 (due date of the response), copy attached as Exhibit D. I searched through the file folder for the subject application, but did not discover the subject Notice of Allowance and Issue Fee Due in any other location in the folder. Neither Mrs. Herrmann nor I remember receiving the Notice of Allowance and Issue Fee Due for the subject patent application. As part of our docketing system, a letter is sent to management regarding whether or not to pay an issue fee, which letter is filed in the patent application file binder. No such letter to or from management was found in the application file binder.

Because of the way records are placed in and retained in the docket card system and the absence of any correspondence or notations in the application file binder and docket cards, I believe that the Notice of Allowance and Issue Fee Due for the subject patent application was not received. As the due date for the Issue Fee of subject patent application was not in the current docket file, Mrs. Herrmann and I were unaware that the fee for the subject patent application was due. The Issue Fee on the patent application was unavoidably not paid.

It is requested that the delay in payment of the Issue Fee for the subject patent be found to have been unavoidable, as the Notice of Allowance and Issue Fee Due

was not received and reasonable care was exercised in designing and operating SEQUA's docketing system to ensure that all of SEQUA's United States patent application Issue Fees would be timely paid. Patentee's undersigned attorney first became aware of this unavoidable error when I received The Notice of Abandonment dated March 2, 2007. The original petition was filed promptly on April 3, 2007 upon my receiving notice that the patent application was abandoned.

I hereby declare that all statements made herein of my knowledge are true except for those statements made on information and belief which are believed to be true and that all statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the reinstatement of and validity of patent 6,154,959.

Respectfully Submitted,

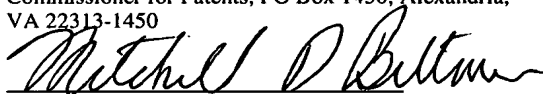
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I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressees" service under 37 CFR 1.10 on the date indicated above and is addressed to:
Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450



Mitchell D. Bittman